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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/825,440

04/14/2004

Bruce Bent

049212-0102

8474

22428 7590 03/03/2010  
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EXAMINER

PATEL, JAGDISH

ART UNIT

PAPER NUMBER

3693

MAIL DATE

DELIVERY MODE

03/03/2010

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/825,440	<b>Applicant(s)</b> BENT ET AL.	
	<b>Examiner</b> JAGDISH N. PATEL	<b>Art Unit</b> 3693	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 12/7/09.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 32-50,60-68,83 and 86 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 32-50,60-68,83 and 86 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                    | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)         | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                          |

### **DETAILED ACTION**

1. This communication is in response to amendment filed 12/7/09.

#### ***Response to Amendment***

2. Claims 32-50, 60-68,83 and 86 are currently pending.

#### ***Response to Arguments***

3. Rejections of the claims 32-50, 60-68,83 and 86 under 35 USC 112(first) and 112(second) have been withdrawn.

4. Previous rejection(s) of the aforementioned claims under 35 USC §251 on the basis of defective oath/declaration have been withdrawn. However, upon further consideration of 37 CFR §§ 1.63 and 1.175, further deficiencies of the oath/declaration have been identified. Accordingly, the amended claims stand rejected under 35 USC §251 as stated below.

#### ***Claim Rejections-35 USC §251/Defective Oath-Declaration***

5. The Supplemental Declaration filed 12/7/09 is defective because it fails to comply with 37 CFR § 1.63. Specifically the supplemental declaration (via the originally filed oath of 4/14/04) states that "the specification of which: is attached hereto. However, the specification has since been amended on 4/14/04, 5/1/07, 7/18/07, 8/29/08, 12/4/08, 3/11/09, and 12/7/09. The reissue declaration must set forth the

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dates of all amendatory submissions which caused amendment to the claims and/or the specification.

Accordingly the currently pending claims 32-50, 60-68,83 and 86 stand rejected under 35 USC §251 as being based on Defective Oath-Declaration.

The Applicant is requested to thoroughly review requirements of 37 CFR §§ 1.63 and 1.175 as set forth in the MPEP (see § 1414). Note also that all oaths must be properly notarized and declaration must declarant's warning against perjury and jeopardy to the validity of the patent.

### ***Conclusion***

The Patent under reissue proceeding is involved in litigation. Accordingly a one (1) month reply period is set.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JAGDISH PATEL whose telephone number is (571) 272-6748. The examiner can normally be reached on Monday – Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, **KRAMER JAMES A** can be reached on **(571)272-6783**. The fax phone number for the organization where this application or proceeding is assigned is **571-273-8300**.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/JAGDISH N PATEL/

Primary Examiner, Art Unit 3693